



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 23<sup>rd</sup> day of October, 1997

SERVED: October 29, 1997

Joint Application of

**FEDERAL EXPRESS CORPORATION**  
**and**  
**FLORIDA WEST INTERNATIONAL AIRWAYS, INC.**

for approval of a transfer of route authority pursuant to  
49 U.S.C. § 41105 (U.S.-Colombia All-Cargo)

**Docket OST-97-2764**

In the Matter of the Application of

**FLORIDA WEST INTERNATIONAL AIRWAYS, INC.**

for renewal of certificate and exemption authority

**Docket OST-97-2646<sup>1</sup>**

**ORDER APPROVING ROUTE TRANSFER**

**Summary**

By this order we approve that portion of Florida West's renewal application in Docket OST-97-2646 to the extent that it seeks renewal of its U.S.-Colombia operating authority, and approve the Joint Application of Federal Express Corporation (Federal Express) and Florida West International Airways, Inc. (Florida West) for the transfer to Federal Express of Florida West's certificate authority on Route 599 to provide scheduled all-cargo foreign air transportation between the United States and Colombia.

---

<sup>1</sup> Only the portion of the application in OST-97-2646 dealing with U.S.-Colombia authority will be considered in this order. The balance of that application will be considered separately.

## **Applications**

On June 23, 1997, Florida West filed an application seeking renewal of certain authorities scheduled to expire August 6, 1997, and invoked the provisions of the Administrative Procedure Act (5 U.S.C. 558(c)) and Part 377 of the Department's regulations to maintain its existing authority pending a decision on the renewal application. Included among those authorities is Florida West's certificate authority for Route 599 which contains scheduled foreign all-cargo authority to serve Colombia.<sup>2</sup>

On July 25, 1997, Florida West and Federal Express filed a joint application under 49 U.S.C. §41105 for approval of transfer of Florida West's U.S.-Colombia all-cargo route authority. The applicants state that the sale of the U.S.-Colombia certificate authority will be for \$5.5 million, and that the Joint Applicants desire to consummate the transaction on October 1, 1997, or as soon thereafter as possible.

In support of their application, the Joint Applicants state that following approval of the transfer, Federal Express will expand the scope of its existing scheduled all-cargo service between the United States and South America by commencing new operations using B-727-200 freighter aircraft to provide air express and expedited air freight service between Memphis and Miami, on the one hand, and Bogota, Colombia, on the other, at an initial frequency of five round trips per week. They state that Florida West has certificate authority and has been designated to provide scheduled all-cargo air service between the United States and Colombia and that Federal Express has been granted U.S.-Colombia exemption authority by the Department but has not been permitted to exercise that authority by the Government of Colombia.

The Joint Applicants also argue that the transaction warrants approval under the criteria mandated by Congress, namely, the effects of the transfer on (1) the viability of each carrier, (2) competition in the domestic airline industry, and (3) the trade position of the United States in the international air transportation market.

In this regard, the Joint Applicants state that the route transfer will not have any effect on the "viability" of Federal Express since the economic impact of expanded U.S.-South America operations will have a positive effect on the already-strong financial and operational health of Federal Express. They further state that approval of the transfer will have a positive impact on the viability of Florida West resulting from the contribution of \$5.5 million in new working capital to Florida West. This capital infusion will be used by Florida West to expand its service levels in other markets. The Joint Applicants next maintain that approval of the transfer should have little or no impact on the U.S. airline industry. They note that the transfer will result in a relatively limited expansion of existing international route authority and gross revenues of Federal Express while not substantially altering the posture of Federal Express as a competitor. They then state that Florida West will continue to function as a significant competitor in the U.S. air cargo

---

<sup>2</sup> As noted above, only the portion of OST-97-2646 dealing with U.S.-Colombia authority is the subject of this order. On July 25 (in conjunction with its joint application with Federal Express) Florida West amended the application to revise its financial forecasts to reflect the elimination of U.S.-Colombia scheduled service to its calendar year 1998 operating plan should the route transfer be approved.

industry and that the sale of its Colombia authority will have little impact on its overall market share in that industry. Finally, they maintain that the transfer of authority to Federal Express is certain to enhance the U.S. trade position in the U.S.-Colombia air cargo market. This will result from both an expansion of the U.S.-flag share of air cargo service revenues in that market and from the facilitation of U.S. exports to South America made possible by the resulting enhancement in U.S.-South America air express and freight services.

The Joint Applicants state that in response to the Administration's Initiative to Promote a Strong Competitive Aviation Industry, the transfer of route authority from Florida West to Federal Express will have virtually no measurable effect on the employees of either carrier. They further state that Florida West does not plan to furlough any employees as a result of the sale of its U.S.-Colombia authority to Federal Express.

### **Responsive Pleadings**

Fine Air Services, Inc. (Fine) filed an objection to the route transfer application as well as to Florida West's certificate renewal application to the extent it involves authority to serve Colombia.<sup>3</sup> Federal Express and Florida West filed a joint reply. Fine and Federal Express and Florida West filed further responses.<sup>4</sup>

Fine objects to the transfer application. Citing its own long-standing inability to secure scheduled all-cargo authority from the Colombian government, Fine contends that it is not in the public interest to transfer Florida West's Colombia authority to Federal Express, since Florida West's authority has expired and remains exercisable only due to the provisions of the Administrative Procedure Act (APA). Fine asserts that it is not the intent of the APA to enable carriers to extend provisional authority for the purpose of selling it before the Department acts on the renewal application. Fine further states that there are serious questions regarding Florida West's compliance disposition and financial fitness and that entertaining the application for transfer before the renewal has been granted is inappropriate. Finally, Fine argues that it has been informed that Florida West did not file an application with the Colombian Government to resume service to Colombia until March 12, 1997, and that it waited over six months after being recertified by the Department before filing the application. Fine urges the Department to reject Florida West's application.

Federal Express and Florida West maintain that the transfer should be approved. They maintain that Florida West's Colombia certificate authority remains in full force and effect until its renewal application is acted upon by the Department, and that its legal rights with respect to that authority are not diminished by its current status as continuing authority under 5 U.S.C. § 558(c). They add that the Department has approved transfer of temporary authority which has nominally expired but which has continued in force pursuant to that statute. They further argue that Florida

---

<sup>3</sup> The answer to the certificate renewal application in Docket OST-97-2646 with respect to Colombia was filed late and was accompanied by a motion for leave to file, which we will grant. Fine had filed an earlier and timely answer to the certificate renewal application raising general issues not related to Florida West's Colombia authority.

<sup>4</sup> These pleadings were accompanied by motions for leave to file which we will grant.

West has diligently sought to resume Colombia rights since its restructuring from bankruptcy which forced it to cease operations. They state that Florida West's predecessor was first awarded Colombia certificate authority in 1984 and used that authority continuously until 1995 when it had to suspend operations. They note that the certificate authority was reissued to the present Florida West in February 1997 and that since that date, Florida West has been continuously engaged in the process of getting its license reissued by Colombia, but has not yet received final authority from Colombia to commence operations.

## **Decision**

We have decided to renew Florida West's certificate authority for U.S.-Colombia all-cargo service under these circumstances and to approve the transfer of that U.S.-Colombia authority to Federal Express Corporation.

Under the August 22, 1996 Memorandum of Consultations between the United States and Colombia, the two governments agreed that neither government would increase the number of carriers authorized or operating scheduled all-cargo services as of that date, except that Colombia may authorize an additional all-cargo carrier and on September 1, 1998, the United States and Colombia each will be able to designate an additional all-cargo carrier. At the time of the MOC the United States had authorized, and the Colombian government had accepted, operations by six all-cargo carriers. Florida West is one of the six authorized carriers. While Federal Express and Fine hold U.S.-Colombia exemption authority from the U.S. government, the Colombian government has not been willing to license them for those services.

The ability of U.S. all-cargo carriers to serve Colombia represents a valuable route right which was obtained in exchange for operating authority for Colombian carriers. It is an important aviation objective that U.S. carriers serve Colombia, and use of these limited route rights is clearly in the public interest. Florida West has previously been found fit to provide international all-cargo services and has stated that it will serve Colombia upon receiving authorization from the Government of Colombia. Given these circumstances, we have decided to renew its route authority for U.S.-Colombia operations and to approve the transfer of that U.S.-Colombia authority to Federal Express Corporation. As discussed below, Fine has presented no persuasive arguments that such renewal, particularly in the context of this route transfer case, is not in the public interest.

The statute authorizing certificate transfers, 49 U.S.C. §41105, provides that no certificate may be transferred unless the Department approves the transfer as being consistent with the public interest. The Department has adopted as its public interest standard in such cases a policy of allowing proposed transfers provided that they do not conflict with important international aviation policy objectives and are not otherwise inconsistent with the public interest.<sup>5</sup> In determining whether a transfer of route authority is consistent with the public interest, we must consider three additional specific criteria: the effect of the transfer on the viability of each of the

---

<sup>5</sup> See *Joint Application of Northwest Airlines, Inc. and Delta Air Lines, Inc.*, Order 95-4-41, p.3., *Joint Application of Federal Express Corporation and Evergreen Airlines, Inc.*, Order 95-8-9, p.4., and *Joint Application of Comair, Inc. and Delta Air Lines, Inc.*, Order 96-9-14, p.3.

carriers involved; on competition in the domestic airline industry; and on the trade position of the United States in the international air transportation market. Also, the Department has stated that it will carefully consider the impact of any proposed sale of route authority on airline workers.<sup>6</sup>

In this case, we find that the transfer meets our standards for approval. Specifically, we note that Federal Express will operate five weekly flights and will foster U.S.-flag competition with foreign carriers in the market, and that U.S. shippers will benefit from the air express and expedited time-definite air freight service proposed by Federal Express. In these circumstances, we conclude that approval of the transfer will benefit the public and will not conflict with our international aviation objectives and will make effective use of our limited opportunities under the U.S.-Colombia aviation agreement.<sup>7</sup>

Moreover, we find that transferring to Federal Express the certificate of Florida West on the Colombia portion of Route 599 will have a beneficial impact on Florida West, since it will benefit from the infusion of new capital to support other routes it intends to serve. In addition, there will be no negative impact on the viability of Federal Express.

There should be little effect on domestic competition as a result of this transaction. To the extent there is an effect on domestic competition, it too should be positive as Florida West will be able to devote its resources to serving other domestic and international routes, thereby providing a basis to strengthen its economic position.

We also find that with respect to the impact on the U.S. trade position in the international air transportation market as a result of this transaction, Federal Express will operate five weekly flights, thereby increasing the U.S. carrier participation in the U.S.-Colombia market. In these circumstances, air commerce between the United States and Colombia should increase.

Finally, we find that the route transfer will have a minimal impact, if any, on airline workers. In fact, the Joint Applicants state that the transfer will have virtually no measurable effect on the employees of either carrier, and Florida West states it does not plan to furlough any employees as a result of the sale of its U.S.-Colombia authority to Federal Express.

The only party objecting to either Florida West's renewal of its U.S.-Colombia certificate authority or the route transfer application is Fine Airlines. Fine Airlines' operating authority has been suspended since September 4, 1997. Thus, it is not now in a position to conduct any operations so as to use this available opportunity for service to Colombia. In these circumstances, we do not find that Fine's objection and its outstanding request with the Colombian government to exercise its Colombia exemption authority provide a public interest basis to withhold approval

---

<sup>6</sup> See, *Initiative to Promote a Strong Competitive Aviation Industry*, January 1994.

<sup>7</sup> As discussed in the text of this order, under the U.S.-Colombia aviation agreement, as modified by the August 1996 Memorandum of Consultations, only six U.S. all-cargo carriers may now be authorized to provide scheduled service to Colombia. Florida West is one of the six carriers currently designated to perform those services. With approval of the proposed transfer, Federal Express would replace Florida West for U.S.-Colombia services.

of the proposed transfer, particularly considering the significant public benefits discussed above which we find will result from the proposed transfer of authority. Similarly, we do not find that Fine's arguments going to Florida West's fitness and its diligence in pursuing a license from Colombia provide a persuasive basis for refusing to renew Florida West's Colombia authority or for withholding the requested transfer. We fully reviewed Florida West's fitness last year and determined that the carrier was fit to operate. Concerning Florida West's efforts in Colombia, the record demonstrates that we issued Florida West an effective certificate for U.S.-Colombia service on February 24, 1997, and that Florida West filed its application with the Colombian government on March 12, 1997, less than one month later. In these limited circumstances, we will, therefore, both renew Florida West's certificate authority and approve the route transfer. Another opportunity to serve Colombia will be available in September 1998. Should Fine be authorized to resume operations, it will be free at that time to file an application for that service opportunity.

Based on the above, we will transfer the U.S.-Colombia authority on Florida West's Route 599 to Federal Express. As is customary, we will issue Federal Express's certificate in the form of a temporary, experimental certificate. By its terms, Florida West's certificate was to expire on August 6, 1997, but Florida West filed an application for renewal (Docket OST 97-2646) and invoked the automatic extension provisions of the Administrative Procedure Act, 5 U.S.C. §558(c) so that its authority would continue in effect pending final DOT action on its application. We will renew Florida West's authority and will make Federal Express's authority effective for a period of five years from the date of issuance of the certificate.

We will also amend Florida West's certificate for Route 599 to delete U.S.-Colombia authority to reflect the transfer of its authority to Federal Express. The balance of its certificate renewal application, and issues relating thereto, in Docket OST-97-2646 will be considered in a separate Department order.

**ACCORDINGLY,**

1. We renew the U.S.-Colombia certificate authority of Florida West International Airlines, Inc., on Route 599 to the extent necessary for the purposes of this proceeding;
2. We grant the application of Federal Express and Florida West in Docket OST-97-2764 to the extent consistent with this order;
3. We will amend the certificate authority of Florida West for Route 599 to delete authority to serve the U.S.-Colombia market to reflect transfer of that authority to Federal Express Corporation;
4. We will issue, in the form attached, a new certificate of public convenience and necessity to Federal Express Corporation authorizing all-cargo service between the United States and Colombia to reflect transfer of Florida West's U.S.-Colombia authority;

5. The certificate and certificate amendment will be effective 30 days after the service date of this order, subject to the extension of those effective dates in accordance with the provision in the certificate and certificate amendment;
6. Unless disapproved by the President of the United States under 49 U.S.C. section 41307, this order shall become effective on the 61st day following its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;<sup>8</sup> and
7. We will serve this order on Federal Express Corporation, Florida West International Airways, Inc.; Fine Airlines, Inc.; the Ambassador of Colombia in Washington DC; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

**CHARLES A. HUNNICUTT**  
**Assistant Secretary for Aviation**  
**and International Aviation**

(SEAL)

---

<sup>8</sup> This order was submitted for section 41307 review on October 23, 1997. On October 29, 1997, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

As amended by  
Order 97-10-23

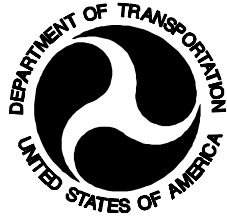
**Florida West International Airways, Inc.**

Certificate Amendment for **Route 599**

Delete Colombia from the listing of countries that may be served on the certificate.

This certificate amendment shall become effective November 28, 1997; provided, however, that prior to the date on which the certificate amendment would otherwise become effective, the Department, either on its own initiative or upon a timely filing of a petition for reconsideration of the order issuing this amendment may by order or orders extend such effective date from time to time.





**Certificate of Public Convenience and Necessity  
for**

**Route 746**

**This Certifies That**

**FEDERAL EXPRESS CORPORATION**

**is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.**

**This Certificate is not transferable without the approval of the Department of Transportation.**

**By Direction of the Secretary**

**Issued by Order 97-10-23  
On October 23, 1997  
Effective on November 28, 1997**

**Charles A. Hunnicutt  
Assistant Secretary for Aviation  
and International Affairs**

Terms, Conditions and Limitations

Federal Express Corporation for **Route 746**

is authorized to engage in scheduled foreign air transportation of property and mail:

Between a point or points in the United States and a point or points in Colombia.

This authority is subject to the following conditions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying the freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the holder has been specifically designated to conduct such services and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing as preference to the holder in a carrier selection proceeding.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation proposed in its application for this authority.

(6) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).

(7) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102 (a)(15).

(8) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.

(9) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(10) In the event the holder commences operations for which it was found "fit, willing, and able," and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

This certificate shall become effective on November 28, 1997; provided, that prior to the date on which this certificate would otherwise become effective, the Department either on its own initiative or on the timely filing of a petition for reconsideration, may by order or orders extend such effective date from time to time. It shall expire five years thereafter, unless the Department earlier suspends, modifies, or deletes the authority.

---

\* This certificate is issued to reflect authority transferred from Florida West International Airways, Inc. to Federal Express Corporation.

